

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Docket No. 22-cv-00858(MKV)
8904 5TH AVE LLC,

Plaintiff,

AMENDED
COMPLAINT

-against-

MJ ENGINEERING & DESIGN LLC., and
BRICOLAGE ARCHITECTURE & DESIGN,
PLLC.

Defendant.

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Plaintiff, by its attorneys Aboulafia Law Firm LCC, as and for its Complaint, herein
allege upon information and belief as follows:

1. At all times hereinafter mentioned, Plaintiff 8904 5TH AVE LLC, was and still is a limited liability company duly existing and operating under the laws of the State of New York, and maintains a principle place of business at 80 W. 40th St., Floor PH, New York, NY 10018.
2. At all times hereinafter mentioned, Plaintiff is the owner of the property located at 8904 5th Avenue, Brooklyn, NY. (“subject premises”).
3. At all times hereinafter mentioned, Defendant MJ ENGINEERING & DESIGN LLC (“MJED”), was and still is a limited liability company duly operating and existing under the laws of the State of New Jersey, and maintains a principle place of business located at 3 Battista Ct., Sayreville, NJ 08872.
4. At all times hereinafter mentioned, Defendant MJED was and still is authorized to do business in the State of New York or is otherwise subject to the jurisdictions of the Courts of the State of New York pursuant to CPLR § 302, VTL § 253, BCL § 306 or §307 and the case laws thereunder.

5. At all times herein mentioned, Defendant MJED expected or should reasonably have expected its acts and business activities to have consequences within the State of New York.
6. At all times herein mentioned, Defendant MJED does and/or solicits business within the State of New York.
7. At all times herein mentioned, Defendant MJED derives substantial revenues from goods used or consumed or services rendered in the State of New York.
8. At all times herein mentioned, Defendant MJED derives substantial revenues from interstate or international commerce.
9. At all times hereinafter mentioned, Defendant MJED was and still is authorized, licensed, admitted and/or engaged in the business of design and engineering and providing such services for the development and construction of commercial buildings in the State of New York.
10. At all times hereinafter mentioned, Defendant BRICOLAGE ARCHITECTURE & DESIGN, PLLC (“Bricolage”), is a professional limited liability company duly existing and operating under the laws of the State of New York, and maintains a principal place of business located at 6321 New Utrecht Ave, Brooklyn, NY 11219.
11. Upon information and belief, at least one of the members of Bricolage – Henry Radusky - is a citizen of the State of New York.

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANTS FOR BREACH OF CONTRACT**

12. On or about May 18, 2020, a contract was entered into with each Defendant separately for services to be performed with respect to the construction and development of a commercial building at the subject premises.

13. These services included, but were not limited to, the preparation, coordination, implementation and review of plans, drawings, shop drawings and details for the façade at the subject premises including all the attachments and connections.
14. That the aforementioned contracts were entered into on behalf of and for the benefit of Plaintiff, and that Plaintiff was the intended third-party beneficiary of the contracts and/or was in the functional equivalent of privity with Defendants.
15. That defendants failed to perform its work in accordance with the good and acceptable industry standards and/or in an improper, careless and negligent fashion.
16. That Defendant MJED's shop drawings for the fiber cement panels used for the façade did not correspond to the corner fastener dimension requirements as specified by the manufacturer's installation guide.
17. That the services performed by Defendant Bricolages were likewise deficient, defective and negligently performed.
18. That Defendant is in breach of contract as a result of the above.
19. As a result of Defendants' breach of contract, Plaintiff has sustained damages in a sum to be determined at trial, but in no event less than \$957,566.51.

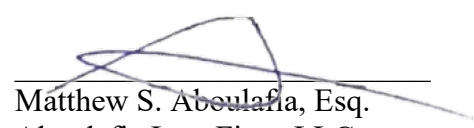
**AS AND FOR THE SECOND CAUSE OF ACTION
AGAINST DEFENDANTS FOR NEGLIGENCE**

20. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 19 hereof, inclusive, with the same force and effect as though the same were more fully set forth herein.
21. That Defendants had a duty to perform its work at the subject premises in accordance with the good and acceptable industry standards.

22. That Defendants breached that duty by failing to perform its work in accordance with the good and acceptable industry standards and/or in an improper, careless and negligent fashion.
23. That Defendants' negligence caused damage to the fiber cement panels installed at the subject premises, as well as other and further damages thereto, that were/are the result of and/or ensued from defendants' failure to perform their work in accordance with the good and acceptable industry standards and/or in an improper, careless and negligent fashion.
24. That Plaintiff sustained damages as a direct and proximate cause of Defendants' negligence, with no negligence attributable to Plaintiff.
25. As a result of Defendants' negligence, Plaintiff has sustained damages in a sum to be determined at trial, but in no event less than \$957,566.51.

WHEREFORE, it is respectfully requested that Plaintiff 8904 5TH AVE LLC, have judgment against Defendants on the First and Second Causes of Action in a sum to be determined at trial, but in no event less than \$937,265.31, together with interest, costs and disbursements related to this action.

Dated: White Plains, New York
April 8, 2022



Matthew S. Aboulafia, Esq.
Aboulafia Law Firm, LLC
Attorneys for Plaintiffs
170 Hamilton Ave, Suite 203
White Plains, Ny 10601
(212) 684-1422